

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

STATE FARM FIRE AND CASUALTY COMPANY :

as subrogee of DAVKEL PROPERTIES LLC :

One State Farm Plaza :

Bloomington, Illinois 61710 :

Plaintiff, :

v. :

BIG'S SANITATION, INC. :

475 West Newton Road :

Elizabeth, Pennsylvania 15037 :

and :

EARTHWISE ENVIRONMENTAL SOLUTIONS, LLC: :

220 Fifth Avenue 18th Floor :

New York, New York 10001 :

c/o The Corporation Trust Company :

Corporation Trust Center :

1209 Orange Street :

Wilmington, Delaware 19801 :

Defendants. :

CIVIL ACTION NO.:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, State Farm Fire and Casualty Company, as subrogee of Davkel Properties LLC, by and through its undersigned counsel, complaining of defendants, hereby avers, upon information and belief, as follows:

PARTIES

1. Plaintiff, State Farm Fire and Casualty Company, as subrogee of Davkel Properties LLC (hereinafter "State Farm"), is a corporation duly organized and existing under the laws of the State of Illinois with a principal place of business located at One State Farm Plaza, Bloomington, Illinois 61710, which is engaged in the insurance business and is licensed to issue homeowners insurance policies in the Commonwealth of Pennsylvania.

2. Defendant, Big's Sanitation, Inc. (hereinafter "Big's"), is a corporation duly organized and existing under the laws of the State of Pennsylvania with its principal place of business located at 475 West Newton Road, Elizabeth, Pennsylvania 15037 and which at all times relevant was in the commercial and residential trash collection and hauling business.

3. Upon information and belief, in the fall of 2023, Earthwise Environmental Solutions, LLC acquired and/or merged with Big's Sanitation, Inc. Earthwise Environmental Solutions, LLC (hereinafter "Earthwise") is a limited liability company organized and existing pursuant to the laws of Delaware with a principal place of business located at 220 Fifth Avenue 18th Floor, New York, New York 10001 and a registered agent of service at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

4. As the successor in interest to Big's Sanitation, Earthwise is liable for the acts and omissions of Big's Sanitation.

JURISDICTION AND VENUE

5. Jurisdiction is based on 28 U.S.C. § 1332(a)(1) as this action involves a controversy between citizens of different states and the amount in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs.

6. Venue is proper in this District based on 28 U.S.C. § 1391(a) as the events giving rise to this claim occurred within this District.

GENERAL ALLEGATIONS

7. Plaintiff incorporates by reference the preceding averments, as though fully set forth herein.

8. At all times relevant, Davkel Properties LLC (hereinafter "Davkel") owned the real and personal property located at 315 Patton Street in Wilmerding, PA 15148 (hereinafter the "Subject Property").

9. At all relevant times, State Farm insured Davkel's property.

10. On August 2, 2022, a truck owned by Big's and operated by an employee or agent of Big's in the course and scope of his employment traveled downhill on Jefferson Street at an excessive rate of speed, overturning while trying to make a left turn onto Patton Street, causing the truck to crash into Davkel's property.

11. As a result of the crash, Davkel sustained severe and extensive damage to its property and incurred extra expenses, costs and lost rental income.

12. Pursuant to the terms and conditions of the policy of insurance, Plaintiff State Farm paid Davkel in excess of One Hundred Sixty-Nine Thousand, Five Hundred and Forty-Seven Dollars and Forty-One Cents (\$169,547.41) for damages resulting from the loss.

13. In accordance with Pennsylvania common law principles of equitable and legal subrogation, and the terms of the insurance policy, State Farm is subrogated to the rights of Davkel to the extent of its payments.

COUNT I – NEGLIGENCE/VICARIOUS LIABILITY

14. Plaintiff incorporates by reference the preceding averments as though fully set forth herein at length.

15. The property damage was caused by the negligence, carelessness, recklessness, and/or negligent omissions of an employee or agent of Big's, and its successor in interest, Earthwise, while acting with the course and scope of his employment, and for which Big's and Earthwise are vicariously liable, and in the following particulars:

- a. failing to safely operate a motor vehicle;
- b. violating applicable state and local laws regarding the safe operation of motor vehicles;

- c. failing to properly, adequately, and safely provide its services with care, quality, and workmanship in accordance with industry standards;
- d. failing to properly provide and/or follow safety rules and regulations;
- e. failing to properly and adequately hire, train, coordinate and supervise its agents, servants, employees, representatives, subcontractors and/or workers;
- f. failing to ensure that its driver operated the vehicle in a proper and safe manner;
- g. failing to inspect and maintain the vehicle;
- h. allowing its driver to improperly and unsafely operate a vehicle;
- i. failing to take all necessary and reasonable precautions to prevent the truck from overturning and crashing into Davkel's property;
- j. causing and/or allowing its driver to overturn the truck and to crash into Davkel's property; and
- k. otherwise failing to use due care under the circumstances.

16. As a direct and proximate result of the aforementioned negligent and careless acts and omissions by defendants, Davkel sustained severe and extensive damages.

WHEREFORE, plaintiff demands judgment against defendants Big's Sanitation, Inc. and Earthwise Environmental Solutions, LLC, as successor in interest, in an amount in excess of One Hundred Sixty-Nine Thousand, Five Hundred and Forty-Seven Dollars and Forty-One Cents (\$169,547.41), together with interest and the cost of this action.

JURY DEMAND

The Plaintiff, State Farm Fire and Casualty Company, demands a trial by jury on all issues.

COZEN O'CONNOR

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